

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ILLINOIS POWER AGENCY	:	
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Petition for Approval of the 220 ILCS	:	Docket No. 13-0546
5/16-111.5(d) Procurement Plan	:	

STAFF OF THE ILLINOIS COMMERCE COMMISSION
REPLY BRIEF ON EXCEPTIONS

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December 2, 2013

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ILLINOIS POWER AGENCY

**Petition for Approval of the 220 ILCS
5/16-111.5(d) Procurement Plan**

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Docket No. 12-0544

**STAFF OF THE ILLINOIS COMMERCE COMMISSION
REPLY BRIEF ON EXCEPTIONS**

The Staff of the Illinois Commerce Commission ("Staff"), by and through its counsel, and pursuant to Section 200.830 of the Commission's Rules of Practice (83 Ill. Adm. Code 200.830), respectfully submits its Reply Brief on Exceptions ("RBOE") in the above-captioned matter.

I. BACKGROUND

On September 30, 2013, the Illinois Power Agency ("IPA") filed its Procurement Plan for the five year procurement planning period from June 2014 through May 2019 with the Illinois Commerce Commission ("Commission") thereby initiating this docket.

On or about October 7, 2013 pursuant to Section 16-111.5(d)(3) of the Public Utilities Act ("PUA"), Staff and the following parties served on each other and filed responses and/or objections to the Plan: the Illinois Competitive Energy Association ("ICEA"), Wind on the Wires ("WOW"), the People of the State of Illinois by and through Illinois Attorney General Lisa Madigan ("AG"), Commonwealth Edison Company ("ComEd"), Ameren Illinois Company ("Ameren Illinois," "Ameren," or "AIC"), the Retail

Energy Supply Association ("RESA"), the Renewables Suppliers ("RS"), and Exelon Generation Company ("Exelon" or "ExGen"). The Illinois Department of Commerce and Economic Opportunity ("DCEO") served objections to the Plan on Staff and some but not all of the parties on October 8, 2013. The objections were subsequently posted to e-Docket on October 21, 2013.

On October 9, 2013, the Chief Administrative Law Judge of the Commission provided notice that, "pursuant to Section 16-111.5(d)(3) of the Public Utilities Act, no hearing in the above-referenced matter is determined to be necessary." The ALJ's ruling provides for the filing of: verified responses to objections and verified replies to responses, due October 21, 2013 and October 31, 2013, respectively. (October 9, 2013 ALJ Ruling.)

On November 13, 2013, the ALJ issued a Proposed Order ("ALJPO"). The ALJ set November 21, 2013 and December 2, 2013 for the filing of exceptions and reply exceptions, respectively.

On November 21, 2013, in addition to Staff the following filed a Brief on Exceptions ("BOEs"): IPA, ComEd, Ameren, RS, RESA, ICEA, ExGen, CUB, AG, DCEO and the National Resources Defense Council ("NRDC").

In the following section, Staff replies to the some of the positions or arguments made in BOEs that were filed on November 21. Staff's failure to address other positions or arguments that were contained in those BOEs should not be construed as agreement with those positions or arguments.

II. ARGUMENT

A. *Response to the Renewables Suppliers*

1. **The IPA Plan Should Not Provide, and the Commission Should Not Order, that Only the REC Purchase Portion of the LTPPAs Should Be Curtailed and that the fixed price for the Energy Swap Portion be set equal to the IPA's 2010 forward energy price curve.**

The RS take issue with the ALJPO on the issue of curtailment of the LTPPAs. The RS want the IPA plan to provide that if the RPS rate caps are to be exceeded only the REC portion of the LTPPAs and not the energy component, should be curtailed. (RS BOE, 1-2.) The Commission should reject the RS' argument. Despite the RS argument to the contrary the REC portion of the LTPPAs and the energy component cannot be split. Under the terms of the contract as ComEd noted in its Response to Objections, the standard terms of the LTPPA provide that the product includes both the energy and the associated RECs. (ComEd Response, 4.) That contract term requiring a bundled purchase was required by Appendix K¹ approved by the Commission in Docket No. 09-0363. Illinois Power Agency, ICC Docket No. 09-0363, December 28, 2009, 120.) Appendix K clearly provides that the product procured is a bundled product. ("The IPA procurement process will be on a bundled basis, for both the energy generated from the project as well as the RECs generated from the project." Appendix K, 7.)

2. **Utilities Should Not be Required to Purchase Curtailed RECs at a Price Equal to the LTPPA Contract Price Less the Day-Ahead Hourly LMPs, using ACP Revenues Collected from the Utilities' Hourly Customers.**

The Commission is under no obligation to approve a repurchase of curtailed quantities of RECs from LTPPA suppliers. No such requirement exists in the LTPPAs

¹ Appendix K, supplemented and modified the IPA's September 30, 2009 Procurement Plan. (IPA Motion for Leave to file Supplemental Recommendations for the Procurement Plan, November 9, 2009.)

nor in the PUA or IPA Act. Instead, for example, the Commission could call for a new RFP to acquire as many unbundled RECs as can be acquired using the funds available from ACP revenues collected from the utilities' hourly customers. RS's request that the utilities and IPA should be required to purchase curtailed RECS at a price equal to the bundled contract price less the day-ahead hourly LMPs should be rejected. As ComEd pointed out in its responsive comments (ComEd Response 8.), the Commission in Docket No. 09-0373 addressed a related issue. The Commission's final order approved the following language in Appendix K to the IPA's procurement plan:

Application to the RPS. The IPA intends to count the REC portion of the procurement toward the RPS requirements and bill-impact cap. To quantify the annual cost of the RECs for the purpose of the RPS, the Procurement Administrator, in consultation with Appendix K 3 Long-Term Renewable Resources the IPA, ICC Staff, and the Procurement Monitor shall develop a confidential 20 year forward price curve for energy at the load zone, including the estimated magnitude and timing of the price effects related to federal carbon controls. Each forward curve shall contain a specific value of the forecasted market price of electricity for each annual delivery year of the contract. In every delivery year, the imputed REC component of expenditures under the bundled renewable contracts will be determined as the difference between the expected annual contract expenditures for that year (based on the winning target Contract Quantities and Contract Prices) and the total target Contract Quantities times the forward price curve for each respective load zone for that year.

(IPA Motion for Leave to File Supplemental Recommendations for the Procurement

Plan, Appendix K, 4 (2009))

While there is no statutory language or contract provision which addresses the prices to be paid for RECs purchased with ACP funds, it seems reasonable that prices paid for curtailed RECs should be determined in the same manner as imputed REC prices were determined in Docket No. 09-0373.

For all the above reasons, and for all the reasons already articulated in the ALJPO, the Commission should reject the RS proposal. However, if the Commission

does approve the RS proposal, then the Commission should also require the utilities to limit their actual expenditures on new unbundled RECs to the level of funds available from ACP revenues collected from the utilities' hourly customers. This would be a simple matter of requiring the utilities to draft a contract that prevents further purchases once those funds have been exhausted.

3. The Commission should reject both the RS recommendation to base purchase quantity decisions on the midpoint between the utilities' "high" and "low" load forecasts and the WOW proposal that the load forecasts should be modified to reflect an assumption of no additional customer switching to ARES during the 2014-2015 procurement year.

RS expresses concern that the base case forecasts do not adequately take into account the risk of re-migration of ERCs. Apart from the stated concerns of RS, lower demand forecasts translate into lower renewable energy budgets and hence larger curtailments of LTPPA quantities. Thus, while not explicitly stated, RS benefits financially from increasing based demand forecasts. While RS' first two exceptions were devoted to increasing prices paid to LTPPA suppliers, this third exception is devoted to increasing quantities. (RS BOE, 8-10.)

However, there is also a risk that the additional cost of RECs generated through these RS recommendations will have to be recovered from a customer base that is smaller than the midpoint of the high and low forecasts. For instance, if the high-low midpoint forecast is used, but actual demand only reaches the base-case forecast level, then the cost of RECs will increase ComEd retail rates above the statutory limit by 16%.²

² This is because the high-low midpoint is 16% greater than the base-case forecast.

If actual demand only reaches the low-case forecast level, then the retail rates will rise above the statutory limit by 37%.³

For the above reasons, and for reasons already well articulated in the ALJPO, the Commission should approve the utilities' base-case scenario forecasts and reject the proposal by RS and WOW to inflate the forecasts.

4. The Commission Should Reject the RS Proposal to Re-litigate Load Forecasting when the Forecasts are Updated in the Spring

The ALJPO was correct in rejecting the RS proposal to consider the March forecast updates in a contested proceeding. The RS proposal is unworkable (RS BOE, 10-12.), as there will be insufficient time to litigate forecasts in the handful of weeks available before the spring procurements must take place. The Commission's past practice has worked well and there is no need to deviate from that practice at this time.

B. Response to DCEO and NRDC

DCEO takes exception to the ALJPO for not incorporating in to the IPA's plan DCEO's low-income and public sector energy efficiency programs. (DCEO BOE, 5.) NRDC takes exception to the ALJPO for not investigating the inclusion of DCEO's low income EE programs in the IPA's next Plan. (NRDC BOE, 2.) Staff addressed this issue in its Reply Comments as well as its BOE. Staff took exception to the ALJPO for failing to adopt Staff's recommendation that a follow-up proceeding be initiated following the final order in this proceeding which would consider DCEO's programs included in Appendix H of the IPA's Plan. Staff's BOE discussed that the proceeding would investigate whether the DCEO programs can be altered so that the utilities are doing the procuring in partnership with DCEO, rather than DCEO doing the procuring. Staff in its

³ This is because the high-low midpoint is 37% greater than the low-case forecast.

BOE recognized the legal impediments in Section 16-111.5B(a)(5) which limit DCEO from implementing its programs because DCEO is not a utility; however, as far as Staff is aware, no parties dispute that there are benefits associated with the cost-effective programs outlined in Appendix H to the IPA's Plan. (Staff Reply, 14; Staff BOE, 3.) So that the Plan utilizes those cost-effective benefits, Staff took exception to the ALJPO and recommended that the Commission make a finding in this docket for including the Appendix H programs as part of the IPA's plan as cost effective programs subject to a condition that there be a follow up proceeding to the pending procurement docket which would seek to determine whether the DCEO proposed programs could be altered from DCEO "procuring" to the utilities doing the procuring in partnership with DCEO, consistent with Section 16-111.5B(a)(5). (Staff BOE, 3.)

III. CONCLUSION

Staff respectfully requests that the Illinois Commerce Commission approve Staff's recommendations in this docket.

Respectfully submitted,

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